

# Terms of Rental

The Renter agrees with the Owner as follows:

## 1 Ownership of the equipment

1.1 The equipment is, and will remain, the sole property of the owner. The renter's only right to the equipment is the right to use it on the terms of this agreement.

1.2 This agreement does not bind the owner until the owner signs it, even if the renter has pre-paid any money or obtained delivery of the equipment. This agreement will bind the renter once the owner signs it, even if the owner does not advise the renter that it has done so.

1.3 If the renter obtains delivery of the equipment before the owner signs this agreement, then the renter must comply with its obligations under this agreement from the time that the renter takes delivery, as if this agreement had commenced at that time.

1.4 No person has authority to conclude this agreement on behalf of the owner other than its duly authorised officer.

## 2 Payments and interest

2.1 The renter must: (a) pay the total rent specified above to the owner by the instalments and at the times specified above; and (b) pay interest on any rent or other money which the renter does not pay on the due date or on demand (as applicable). Interest will be calculated at a rate equal to 1% above the indicator lending rate for the time being advised by the National Australia Bank.

2.2 The renter agrees to pay to the owner the amount of any GST payable on all amounts payable under this agreement, and acknowledges that GST has been included in the rentals specified above.

2.3 The renter must not withhold, or make a deduction from, any payment under this agreement for any reason including because: (a) the equipment is damaged or does not operate; (b) the renter claims to have a set-off, or counterclaim or other rent against the owner or any other person; or (c) any service provider or other third party fails to meet its obligations in respect of the equipment.

## 3 Obligations of the renter

3.1 The renter must: (a) comply with the manufacturer's instructions and recommendations relating to the equipment; (b) use or keep the equipment only in the place indicated above, under the personal control of the renter or its employees; (c) allow the owner or its nominee access to any place where the equipment is kept for any purpose relating to this agreement, including testing or inspection; and (d) at its own expense comply with all laws relating to the registration and licensing of the equipment or the use of it.

3.2 The renter must not: (a) alter, add to or install anything on the equipment; (b) use the equipment for any purpose which is unlawful or which might prejudice the owner's interest in the equipment or invalidate any insurance in relation to the equipment; (c) install the equipment in any manner that would cause it to become a fixture to land; (d) create any lien or other encumbrance over the equipment; or (e) alter or cover up any insignia, number, identifying plate or mark on the equipment.

3.3 The renter must immediately notify the owner of loss of, or damage to, the equipment by any cause.

## 4 Risk and indemnities

4.1 The renter assumes all risks and liability in relation to the equipment (including liability for injury to any person or damage to any property, whether direct or consequential).

4.2 The renter acknowledges that the reading obtained through the correct use of the equipment is considered accurate at the time of testing. Neither the manufacturer, distributor, owner nor licensee of the equipment, accepts liability or responsibility in respect thereof. Readings obtained through use of the equipment cannot be used as evidence in a court or tribunal.

4.2 The renter indemnifies the owner against all losses, costs, liabilities and expenses incurred by the owner as a result of: (a) loss of, or damage to, the equipment by any cause (including lawful confiscation); (b) anything done by or with the equipment; (c) the occurrence of any event referred to in clause 8.1; or (d) breach by the renter of clause 12. The renter must pay to the owner on demand any amount payable under this indemnity. This indemnity survives the expiry or termination of this agreement.

## 5 Destruction of the equipment

5.1 If the equipment is totally or substantially destroyed the owner may terminate this agreement by notice to the renter.

5.2 Within 7 days of receipt of that notice the renter must pay to the owner by way of indemnity against capital loss an amount equal to the amount which would have been payable under clause 9.2 if the renter had failed to comply with a fundamental provision of this agreement.

5.3 The owner will credit to the renter any insurance money or proceeds of salvage received by the owner if and when received, but that credit will not exceed the amount payable by the renter under clause 5.2.

## 6 Procedure on expiry or termination

6.1 When this agreement expires or is terminated the renter must at its own expense immediately return the equipment to the owner at the place the owner nominates, in good order and repair (normal wear and tear excepted) and in compliance with the return conditions attached to this agreement (if any).

6.2 If the renter does not return the equipment to the owner when required, the owner may at any time retake possession of the equipment and the renter releases the owner from any liability which the owner might otherwise have for any damage or loss caused by the owner retaking possession. The renter must reimburse to the owner on demand all costs and expenses incurred by the owner in retaking or attempting to retake possession and in making any repairs to, or reconditioning, the equipment necessary to bring it to the condition in which the renter is required to return it.

## 7 Renewal

This agreement will be automatically renewed following the expiration of the initial term set out above ("initial term") or

the expiration of any subsequent term pursuant to this clause ("extended term") for a further term that is the same as the initial term (and otherwise on the terms of this agreement) unless the renter: (a) notifies the owner in writing not less than 60 days before the expiration of the initial term or any extended term of the renter's intention to terminate this agreement on the expiry of the initial term or the extended term (as the case may be); and (b) returns the equipment to the owner on the expiry of the initial term or the extended term (as the case may be).

## 8 Default

8.1 Each of the following is an event of default under this agreement: (a) the renter does not pay on the due date any instalment of rent or other money payable under this agreement; (b) the renter does not comply with any of its other obligations under this agreement and, if that failure to comply can be rectified, it is not rectified within 7 days after the owner gives the renter a notice requiring the renter to do so; (c) if the renter is a corporation: (i) an application or order is made, or a resolution is passed, for the winding up of the renter or the appointment of an administrator to it; (ii) a liquidator, provisional liquidator or administrator is appointed to it; or (iii) it fails to comply with a demand under any applicable legislation and as a result is taken to be insolvent; (d) a receiver or receiver and manager is appointed to, or a mortgagee takes possession of, all or any part of the renter's business or assets; (e) the renter makes a composition, arrangement or compromise with, or an assignment for the benefit of, its creditors or any class of them; (f) any distress or execution is threatened or levied against the equipment or the equipment is lawfully seized or impounded; (g) if the renter is an individual, the renter commits an act of bankruptcy, becomes bankrupt, dies or is sentenced to imprisonment; (h) any representation or warranty made by the renter in this agreement or in relation to it is untrue or misleading in a material respect; (i) an event or series of events (whether related or not) occurs, including without limitation any change in the financial condition of the renter, which has or is likely to have a material adverse effect upon either the enforceability of this agreement or the ability of the renter to comply with its obligations under it; (j) the person or persons who at the date of this agreement control (whether directly or indirectly) the voting rights of the majority of the voting shares of the renter cease to have that control; or (k) any of the events referred to in paragraphs (c) to (j) occurs in relation to any person who has given a guarantee or security to the owner for the performance of the renter's obligations under this agreement.

8.2 If any event of default occurs then (without affecting any other right or remedy of the owner under this agreement or otherwise) the owner may at its option: (a) take action to force the renter to perform its obligations under this agreement; or (b) terminate this agreement by notice to the renter, and in either case the owner may also take action against the renter to recover damages for breach of this agreement.

## 9 Fundamental provisions

9.1 The fundamental provisions of this agreement are that: (a) the renter pays all rent and other money due under this agreement on time; (b) the renter complies with its obligations under clauses 3, and 11; and (c) no event

referred to in paragraphs 8.1 (c) to (g) occurs. The renter repudiates this agreement if it does not comply with any of the fundamental provisions of this agreement.

9.2 If the renter repudiates this agreement then the owner may accept that repudiation by notice to the renter terminating this agreement. If the owner does so, the renter must pay to the owner by way of liquidated damages an amount equal to the total of: (a) all unpaid rent up to the date of termination and any other money payable to the owner pursuant to this agreement; and (b) the unpaid balance of the rent that would have been payable during the period from the date of termination until the expiry of the term specified above, brought to a present value by applying the discount rate to each such instalment over the period by which the date for payment is brought forward by this clause. "Discount rate" means the rate which is 2% less than the interest rate implicit in this agreement; and (c) if the equipment is not returned to the owner within 7 days of termination, the value of the equipment.

## 10 Exclusion of warranties

10.1 The renter acknowledges and agrees that: (a) before signing this agreement it satisfied itself, relying solely upon its own judgement, as to the condition, suitability and specifications of the equipment and its fitness for the renter's purposes; (b) the owner has not given any warranty or made any representation to the renter as to the equipment or its use other than representations and warranties expressly made in writing; (c) the renter's obligations under this agreement (including, without limitation, the obligation to pay rent) will continue despite any defect in or breakdown of the equipment or any other matter concerning the equipment; (d) so far as the law permits, all conditions and warranties on the part of the owner which might be implied in relation to this agreement or the equipment are excluded; and (e) to the extent that any implied condition or warranty on the part of the owner cannot be excluded, the owner's liability for a breach of any such condition or warranty is limited (but only to the extent permitted by law) at the owner's discretion to replacing the equipment, supplying equivalent equipment, paying the cost of replacing the equipment or acquiring equivalent equipment, or repairing the equipment or paying the cost of having the equipment repaired.

10.2 If any provision of clause 10.1 is or becomes unlawful or void it is to be read down to the extent only to which it is unlawful or void.

## 11 Assignment

The renter must not assign, encumber or otherwise deal with the equipment or its rights under this agreement. The owner may assign, encumber or otherwise deal with its rights in any way.

## 12 Renter's warranty

The renter warrants that the equipment will be used for the purposes of the renter's business and the rent and other amounts payable under this agreement are outgoings necessarily incurred by the renter in carrying on its business.

## 13 Amounts payable by the renter

13.1 The renter must pay (or, if paid by the owner, reimburse the owner for): (a) all stamp duty and other duties, registration fees, licence fees and other fees, taxes

and charges which are payable at any time (whether by the renter or the owner) in relation to the equipment, this agreement or any payment made under this agreement; and (b) all other costs and expenses (including legal costs on a full indemnity basis) incurred by the owner in relation to this agreement or the exercise or attempted exercise of any of the owner's rights under it.

13.2 If an estimate of stamp duty or goods and services tax is included in the rent set out above, that estimate does not limit the obligations of the renter under this agreement if additional goods and services tax or duty is assessed to be payable at any time.

#### 14 Variations

The renter may request a variation to the terms of this agreement from time to time, and the owner will consider any such request. However any such variation will be at the absolute discretion of the owner and subject to the renter signing all documentation required by the owner.

#### 15 PPSA

15.1 The renter agrees (to the extent permitted by law) that: (a) the owner does not have to comply with any of the requirements of, and the renter waives its rights under, sections 95, 120, 121(4), 123, 125, 129, 130, 132(3)(d), 132(4) 134(2), 135 and 137(2) of the Personal Property Securities Act 2009 (Cth) (**PPSA**) or any other provision of the PPSA notified by the owner to the renter from time to time; (b) the renter may not exercise any rights under sections 142 and section 143 of the PPSA; and (c) the owner or any receiver (or receiver manager) appointed by the owner does not have to give any notice required under the PPSA (including a notice of verification statement).

15.2 The owner may, at the renter's expense, apply for any registration, or give any notification, in connection with any security interest under the PPSA, or other security interest or encumbrance or preferential interest or arrangement of any kind (**Security Interest**), and for whatever class of collateral that the owner determines. The renter consents to any registration or notification by the owner and agrees not to make an amendment demand.

15.3 This agreement is confidential. The renter will not request any disclosure be made, disclose or authorise the disclosure, of any information of the kind mentioned in section 275(1) of the PPSA, unless section 275(7) of the PPSA applies and in that case only the owner is entitled to make the disclosure.

15.4 Nothing in this clause 15 will prevent any disclosure by the owner that it consider is necessary to comply with its other obligations under the PPSA.

15.5 Everything that the renter is required to do under this clause 15 is at the renter's expense. The renter agrees to pay or reimburse the costs of the owner in connection with anything that the owner does under this clause 15 or anything that the renter is required to do under this clause 15.

#### 16 General provisions

16.1 This agreement may only be varied or replaced by a document signed by the owner, and cannot be cancelled or terminated except as it expressly provides.

16.2 A right of the owner, a breach of an obligation of the renter or an event of default under this agreement can only be waived by a written instrument signed by the owner. No other act, omission or delay of the owner will constitute a waiver. A single or partial exercise or waiver by the owner of a right relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

16.3 The only agreement between the owner and the renter with respect to rental of the equipment is that contained in this agreement.

16.4 If any provision, or part of any provision, of this agreement is unenforceable, then it is to be severed from this agreement without affecting the remaining provisions.

16.5 Where two or more persons constitute the renter, a reference to the renter includes each of them and all of them and the obligations of the renter bind them jointly and separately.

16.6 Any notice, consent or other communication under this agreement must be in writing. Any notice to be given by the owner to the renter may, in addition to any other manner in which it may be given, be sent by prepaid post addressed to the renter at its last known place of residence or business and is taken to have been received on the second business day following posting.

16.7 This agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that state.

16.8 Time is of the essence with respect to the performance of the renter's obligations under this agreement.

16.9 The rights of the owner under this agreement are cumulative and in addition to any of its other rights.

16.10 Unless the context otherwise requires: (a) words denoting the singular include the plural and vice versa and words denoting one gender include each gender; (b) words denoting a person include a corporation or other entity and vice versa; (c) headings are for convenience only and do not affect the interpretation of this agreement; (d) a reference to a party includes its successors and permitted assigns; and (e) a reference to the equipment includes any parts or accessories from time to time attached to or forming part of the equipment, whether in addition to or in replacement of any part of the equipment referred to above.

16.11 The owner may set off without notice any money held by the owner on account of the renter or otherwise owing by the owner to the renter against any rent or other money owing by the renter to the owner under this agreement.

16.12 The renter authorises the owner to complete any blank spaces in this agreement and in particular to insert the serial numbers and other identification details of the equipment.